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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: EL PASO Date: MAR 03 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on June 26, 1971 in Pichit, Thailand. The record indicates that the applicant's biological father, [redacted] was born in Altadena, California on February 25, 1949, and that he is a United States (U.S.) citizen. The applicant's mother, [redacted] was born in Pichit, Thailand on February 11, 1947. She became a naturalized U.S. citizen on December 9, 1993, when the applicant was 22 years of age. The applicant's mother married [redacted] on November 23, 1973. Mr. [redacted] adopted the applicant in 1976 when she was five years of age. Mr. [redacted] filed an N-600 Application for Certificate of Citizenship on the applicant's behalf in 1996 when she was 25 years of age. The record indicates that the applicant was admitted to the United States on October 14, 1977. The applicant seeks a certificate of citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that she acquired U.S. citizenship at birth through her biological father.

The district director determined that the applicant had failed to establish that her biological parents were married, thus legitimating the applicant, or that her United States citizen father was physically present in the United States or its outlying possessions for a period of 10 years prior to the applicant's birth, at least 5 of which were after her father reached the age of 14. *See District Director Decision,* dated October 1, 2003.

On appeal, counsel asserts that the applicant's biological parents were legally married and that despite the applicant's efforts, her biological father, Mr. [redacted] has refused to comply with requests for documentation regarding his physical presence.[1]

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 330 (BIA 1969) (citations omitted).

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). In the present case, the section of law that applies is section 301(a)(7) of the former Act. The applicant is not eligible to apply for derivative citizenship under former sections 320 or 321 of the Act because her mother did not naturalize until after the applicant was over 18 years of age. Further, she is not eligible under section 322 of the Act because her adoptive father did not apply for a certificate of citizenship on her behalf until she was over 18 years of age.

Section 301 of the former Act states in pertinent part:

> (a)The following shall be nationals and citizens of the United States at birth:
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> > (7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien and the other a

[1] The AAO notes that counsel also requests a stay of deportation, a verbal hearing before the Court, a writ of habeas corpus and various other forms of relief. The AAO does not have jurisdiction or authority to address any of those requests and will therefore limit this discussion to the merits of the application for a certificate of citizenship.

> citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

Section 309 of the former Act relates to children born out of wedlock and states:

> (a) The provisions of paragraphs (3), (4), (5) and (7) of section 301(a), and of paragraph (2) of section 308, of this title shall apply as of the date of birth to a child born out-of-wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.
>
> (b) Except as otherwise provided in section 405, the provisions of section 301(a)(7) shall apply to a child born out-of wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before the effective date of this Act and while such child is under the age of twenty-one years by legitimation.
>
> (c) Notwithstanding the provision of subsection (a) of this section, a person born, on or after the effective date of this Act, outside the United States out-of-wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

In the present matter there are two issues to be resolved. The first issue is whether the applicant's mother and biological father were actually married, thus legitimating her at birth. In addition, if it is determined that they were married, it must be established that her biological father had the required period of physical presence in the United States necessary to comply with the provisions of the Act.

On appeal, and in various affidavits, the applicant asserts that her mother and Mr. [redacted] were married in a civil ceremony in Thailand in 1970 before she was born. She states that she is unable to provide a copy of the marriage certificate because it is not available from the village in Thailand where the ceremony took place. The applicant has provided no documentation from Thai authorities to support that assertion or any other evidence that an effort has been made to obtain the certificate. In addition, this assertion contradicts information provided by her mother, under oath, on numerous documents. On her 1973 I-129F application for a fiancée visa filed by Mr. [redacted] and in a 1973 interview before a consular officer, she stated that she had never been married. On her 1974 I-485 application to adjust status and her 1992 N-400 application for naturalization she noted that she had been married only one time. The AAO notes that the applicant's mother has not provided any affidavit or other statement in support of the applicant's claim.

The AAO finds that the applicant has not provided evidence that her biological parents were married. Further, while her biological father has admitted his paternity, there is no evidence that she was ever legitimated. In any event, paternity was not established until 2001, when the applicant was 30 years old. The AAO, therefore, finds that the applicant has not established eligibility under section 301(a)(7) of the former Act, either as a legitimate child or a child born out-of-wedlock.

As the AAO has determined that that the applicant's biological parents were never married and that she was never legitimated by her biological father, it is not necessary to discuss whether her biological father met the physical presence requirements of section 301(a)(7). However, the AAO notes that counsel's argument that special consideration be given due to the biological father's refusal to cooperate is not persuasive. The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1452. The applicant has provided no evidence of her biological father's physical presence in the United States.

Given the absence of evidence in the record to support the claim that the applicant's biological parents were married and that her biological father was physically present in the United States for the requisite time period, the applicant has not met the burden of establishing her eligibility for a certificate of citizenship under section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.